IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 7093 of 1999

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NEW INDIA ASSURANCE CO.LTD.

Versus

DHULAJI JIVAJI THAKORE

Appearance:

MS MEGHA JANI for Appellant

CORAM : MR.JUSTICE Y.B.BHATT and

MR.JUSTICE A.K.TRIVEDI

Date of decision: 10/12/1999

ORAL JUDGEMENT (Per Y.B. Bhatt J.)

1. This is an appeal under section 173 of the Motor Vehicles Act, 1988 at the instance of the Insurance Company, being opponent no.3 in Motor Accident Claim Petition No.964/92.

2. The claimant in the said claim petition had claimed compensation and damages for injuries sustained, which was partly allowed by he Tribunal. It is this award which is the subject matter of the present appeal.

3. Learned counsel for the appellant has first sought to contend that the case would be covered under the decision of the Supreme Court in the case of Smt. Mallawwa Vs. The Oriental Insurance Co. Ltd. reported at 1999 ACJ page 1 (=JT 1998(8) SC 217).

3.1 There is no doubt that the said decision of the Supreme Court clearly lays down the principle, after interpreting section 95 of the Motor Vehicles Act, 1939, both before and after its amendment, that the person who is travelling in a goods vehicle either with his goods or without his goods would not be entitled to claim compensation as against the Insurance Company. This decision is based on a consideration of section 95 of the old Act and is specifically confined to the interpretation of the said section, which deals only with minimum mandatory coverage under the said section i.e. "act only policy". Secondly, the decision applies only to those persons who were travelling in a goods vehicle. On the facts of the case, as found by the Tribunal and as we shall discuss hereinafter, neither of these two conditions apply to the facts of the present case. The policy in question is a comprehensive policy and therefore is not an "act only policy", and secondly the injured was neither a fare-paying nor free passenger.

3.2 On the facts of the case it requires to be noted that the vehicle in question was a Matador. The insurance policy, a copy of which has been made available to us, indicates only that the type of body was "P/C". This does not, by itself, in any manner, classify the vehicle as a "goods vehicle". The Tribunal has rightly found, which we have verified from the copy of the written statement filed by the Insurance Company, that a specific case put up in para 8 of the written statement was "It is submitted that in the content of the petition, the category of the vehicle is not made clear. It is, therefore, submitted that the said matador was utilised when the accident took place as against the RTO permit .....". This makes it clear that firstly it was not the case of the Insurance Company that the vehicle was "a goods vehicle". Secondly, it was the specific case of the Insurance Company that the vehicle was on the date of the accident used contrary to the RTO permit. In the context of these two contentions taken in the written

statement, learned counsel for the appellant admits that neither the RTO permit nor the registration book of the vehicle has been produced on record. Therefore, the Tribunal was justified in holding that the Insurance Company has failed to prove that the vehicle in question was " a goods vehicle."

3.3 Learned counsel for the appellant, however, seeks to contend that the policy itself indicates that the vehicle was a goods vehicle.

3.4 We cannot accept this contention for the simple reason that whether a vehicle is "a goods vehicle" or some other type of vehicle is not determined by the contents of a policy, but is determined by the appropriate definition under the Motor Vehicles Act and the certificate of registration issued by the RTO. It is conceivable that in a given set of circumstances a vehicle may be classifiable under different heads and/or under different definitions under the Motor Vehicles Act, and in such a case it may be open to the Insurance Company to insure that vehicle under a particular category. However, this is not determinative of this aspect.

4. Even otherwise, when we see the policy, we have no hesitation in holding that even the contents of the policy do not indicate that it was insured as "a goods vehicle".

4.1 On the top of the policy there are columns such as "Engine number", "Chassis Number", "Make", "Year of manufacture", "Type of body", etc. which have been filled in by typewriting, and while doing so the details filled in under each head have shifted by one column to the right. Thus, under the column "Make", there is a blank and the word "Tata" appears below the column "Year of manufacture", the figure 1990 appears under the column of "Type of body", the letters "P/C" appear under the column of "Gross vehicle weight", etc. When this shift in typewriting is corrected, it would mean that the Make was Tata, the year of manufacture was 1990 and that the type of body was P/C, that the gross vehicle weight was 5300, etc. What is most significant is that under the heading "Goods carrying", and the sub-headings "General carriage" and "owned goods", both the columns are blank.

4.2 Thus, we cannot accept the contention of the learned counsel for the appellant that the contents of the policy are sufficient to establish that the vehicle was a goods vehicle.

5. Learned counsel for the appellant then contended that the risk to passengers is not covered by the policy. The policy itself on the face of it shows that it is a comprehensive policy. In this context we must find and uphold the finding of the Tribunal that the injured claimant was not "a passenger" in the vehicle as normally understood. It is specifically the case of the claimant and conclusively established by the evidence on record that he was the owner of the goods being transported in the vehicle, for which he had paid the fare. He had specifically described the goods being carried on the vehicle as two bags of wheat, and the Tribunal has also found on interpretation of the panchnama that the goods being carried on the truck were scattered on the road after the accident. We have, therefore, no hesitation in holding that the injured claimant was not simply a passenger, but was the owner of the goods, accompanying the goods being transported.

6. A senior officer of the Insurance Company Shri Mukundbhai Natwarlal Patel has been examined at Exh.33, who has specifically admitted that the owner of the goods being transported, (or a representative of the owner) can be carried on the vehicle.

7. Thus, on the facts and circumstances of the case, when it is clearly established that (1) the injured was the owner of the goods travelling in a vehicle, and (2) where the vehicle is not proved to be "a goods vehicle", the Insurance Company would be liable to pay compensation to such a person jointly with the owner and driver of the vehicle.

8. No other contention has been raised. Furthermore, since this is an appeal only by the Insurance Company, the question of quantum of compensation has not been raised.

9. We, therefore, find that there is no substance in the present appeal and the same is, therefore, dismissed.

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